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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No. 15514 of 2017
and
CrI.M.P.No.9691 of 2017

- 1.P.B.Nanjaiah Lingammal Public Charitable Trust,
Represented by its Managing Trustee
N.Krishnaswamy,
No.21/1/67, Main Road,
Mettupalayam 641301,
Coimbatore District.
- 2.N.Krishnaswamy
- 3.Nanjaraj Chandappa
- 4.Mallika Murali Babu
- 5.R.Murali Babu
- 6.G.Palaniswamy
- 7.Chandini Surya Kumar
- 8.Nandini Amar Kumar
- 9.Sujatha Chandappa
- 10.Cavery Nanjaraj
- 11.R.Chandrasekar
- 12.Vivek Chandrasekar
- 13.Usha Umapathi
- 14.Preetham Umapathi
- 15.Vikram Umapathi
- 16.Malathi Krihnaswamy
- 17.N.Devaraj
- 18.K.Keshav Raj
- 19.Renuka Lakshman
- 20.K.Kantharaj



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21.M/s.Encee Aromatics Pvt.Ltd.,
Represented by its Vice Chairman
Sri.N.Krishnaswamy
No.2/98-A, Vellipalayam Road,
Mettupalayam 641301, Coimbatore District.

22.M/s.Chandini and Co.
Represented by its partners
Sri.N.Krishnaswamy, Sri.C.Nanjaraj,
Smt.Mallika Muralibabu and Sri.R.Murali Babu
No.2/98-A, Vellipalayam Road,
Mettupalayam 641301, Coimbatore District.

23.M/s.Encee Granites Pvt.Ltd,
Represented by its Managing Director,
Sri R.Chandrashekar and Directors,
Sri Vivekchandrashekar, Sri N.Krishnaswamy,
Sri C.Nanjaraj and Smt.Mallika Murali Babu,
No.21/1/67, Main Road,
Mettupalayam 641301, Coimbatore District.

24.G.Samminadan

25.M/s.Vanilla Resources(India) P.Ltd
Represented by Sri C.Nanjaraj, Director
No.21/1/53, Main Road,
Mettupalayam 641301,
Coimbatore District.

...Petitioners

Versus

P.P.Sivaswamy
General Secretary of Genesis Society
(Reg.No.80/2014),
Office at 65-A, Gopalapuram,
3rd Street,
Coimbatore-641 018.

...Respondent

PRAYER:Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records relating to C.C. No.38 of 2017
on the file of the Judicial Magistrate, Mettupalayam, and quash
the same in so far as the petitioners are concerned.

For Petitioners : Mr.N.Sridhar
for Mr.R.Bharath Kumar

For Respondent : Mr.Jayanth Balakrishna
(appeared in person)



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O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C. No.38 of 2017, pending on the file of the learned Judicial Magistrate, Mettupalayam.

2. Brief facts of the case in a nutshell are as follows:-

The learned Judicial Magistrate, Mettupalayam, took cognizance of the private complaint filed by the respondent/Genesis Society, registered in the year 2014. The first accused is the Trust and the other accused are trustees, purchasers, lessees, attestors of the documents and Bank official, who have sanctioned the loan in respect of immovable property originally owned by the Trust, subsequently purchased by some of the accused herein. The private complaint was lodged, as if there were several sale deeds and lease deeds executed among relatives, thereby, they caused breach of trust. Hence they committed an offence punishable under Sections 107 to 109, 120B, 405, 406, 409 and other provisions of the Indian Penal Code.

3. Though the private complaint runs to about 28 pages, just like a civil Suit, the main allegation pressed into service with regard to the sale of certain properties, dated 21.06.1977 and 21.12.1981, and lease deeds of the years 1994 and 1996, the main contention of the learned counsel appearing for the petitioners is that the private complaint itself is motivated and the result of a civil litigation which went against one of the daughters of the second accused and his son in law.

4. It is his further contention that the trust deed itself authorised by the trustees to deal with the properties and the Civil litigations filed by the daughter of second accused went against her and ultimately concluded in S.L.P.Nos.15105 and 15106 of 2018.

5. It is his further contention that the so called society has been formed in the year 2014. The relationship between one of the daughters of the second accused and her husband on one side and second accused on the other side was marred due to several acrimonious litigation between daughter against father, who is arrayed as second accused in private complaint. This prosecution itself is the result of hatredness and rancour exhibited by daughter and son-in-law of second accused. It is further submitted that civil litigation initiated by daughter of second accused went upto Apex Court and dismissed not stopping with, several petitions were filed in the form of Trust O.P before Principal District Judge, Coimbatore which were also dismissed by Civil Court.



6. On 18.02.2010, one Jayashree Jayanth, daughter of second accused and two others had filed Trust O.P.108 of 2010, before the Principal District Judge, Coimbatore, for seeking removal of the respondents 2 to 4 therein, from the office of the Trustees in P.B.Nanjaiah Lingammal Charities Trust. Subsequently, the above Original Petition was dismissed as not pressed on 12.02.2013 before the Principal District Judge, Coimbatore. Besides she also filed an application along with two others, in I.A.No.2199 of 2011 in O.S.C.F.R.No.26110 of 2011, on the file of the Principal District Judge, Coimbatore, to grant leave to the petitioner, therein to file a suit to settle the scheme for administration of the Trust and to remove the respondents/defendants 2 to 6 from the office of the Trustees in the Trust, and to appoint new trustees and directing accounts and inquiries and restraining the respondents from interfering with the affairs of the Trust, which was also subsequently dismissed.

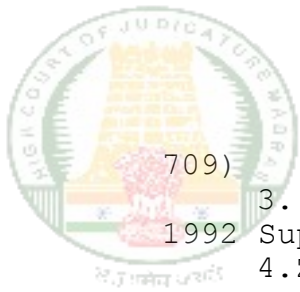
7. In the meanwhile, when the matters are pending, suddenly, the Society was formed on 11/3/2014 with its object to espouse the interest of the Public Charitable Endowment. Thereafter, they have also filed an application to implead as a party in the pending leave Application filed by Jayashree on 04.01.2016. Thereafter, the above applications were dismissed and impleading application filed by the society, in I.A.No.540 of 2016 in O.S.C.F.R.No.26110 of 2011 was also dismissed and thereafter, leave application filed by Jayashree was also dismissed. Hence, it is his contention that the entire litigation is engineered by the daughter of the second accused and her husband viz., Jayanth Balakrishnan (Party-in-Person). Therefore, in the name of the society, now criminal Complaint has been given by the son in law of the second accused, who is arguing on behalf of respondent as party-in-person.

8. It is his further contention that entire complaint is motivated and abuse of process of law and the alleged offences has not been made out. It is only to harass the entire family members of A2 and even the bank officials are also not spared in the complaint. When the very complaint itself is motivated and initiated only to vindicate the personal right, the same should be quashed by this Court.

9. To substantiate the case of the petitioners, the learned counsel appearing for the petitioners has cited the following citations:-

1. Chairman Madappa Vs. M.N.Mahanthadevaru and Others AIR 1996 Supreme Court 878.

2. Madhavrao Jiwaji Rao Scindia and another etc., Vs. Sambhajirao Chadrojirao Angre and Others (AIR 1988 Supreme Court



709)

3. State of Haryana and Others Vs. Bhajan Lal and others AIR 1992 Supreme Court 604

4. Zandu Pharmaceutical Works Ltd and Others Vs. Md. Sharaful Haque and others AIR 2005 Supreme Court 9.

5. Rajiv Thapar and Ors. Vs. Madan Lal Kapoor 2008 Cri.L.J 4788 (Del)

10. Mr. Jayanth Balakrishna, Party in Person appeared for Genesis Society. Its main object is to espouse the cause of religious trust. One of the aims of the society as could be seen in the bylaws reads as follows:

to undertake, establish, aid or take over any religious or charitable institution or endowment, temple, church, mutt etc., subject to the existing law.

11. Further aims of the society is to take up the functions of other charitable trusts on as needed basis for the benefit of the public beneficiary. For example, in the case of mismanaged public trusts, Genesis Society shall endeavour to litigate and seek direction from the Court for court supervised administration and to establish a scheme of administration and/or removal of Trustees. The Society shall apply to the Court seeking direction to place its key members as trustees in the case of mismanaged trusts, for the benefit of the public beneficiaries.

12. It is his contention that Society's aim and object is to preserve the public trusts. There were serious mismanagement and the properties have been sold contrary to the object of the trust, the respondent Society has rightly lodged the complaint. In the instant case, properties have been sold among the family members and thereby, offence under Sections 107 to 109, 120 (B), 405, 406 and 409 of the Indian Penal Code would be attracted. All offences are cognizable in nature. The Court cannot interfere with the same while exercising the same under Section 482 Cr.P.C.

13. It is his further contention that he is also interested in litigating the public rights interest particularly in the trust properties. Therefore it is his contention that the allegations in the complaint has been made since the properties have been dealt by them among the family members. Therefore, the same cannot be quashed. Further his contention that locus standi to file complaint or initiate criminal action is unknown to criminal jurisprudence. Though several allegation also made in the form of written submissions, the crux of the allegation that was able to cull out his main submission were as above. He



also relied on the following judgments.

1. Sri Mudaliambal Trust Vs. The Anna University and Ors. (2003) 4 L.W. 322.
2. The Secretary, The Coimbatore Vasavi Trust Vs. K. Karuppasamy and Ors 2011 (3) CTC 321
3. Srinivasa Chariar Vs. Evalappa Mudaliar (AIR 1922 PC 325)
4. Satish Mehra Vs. State of N.C.T of Delhi and Ors 2013 (1) ACR 591
5. The State of Madhya Pradesh Vs. Laxmi Narayan and Ors 2019 (2) ACR 1230
6. Shiva Nath Prasad Vs. State of West Bengal and Ors 2006 (1) ACR 722 (SC)
7. A.R. Antulay Vs. Ramdas Srinivas Nayak and Ors (AIR 1984 SC 718)

14. Even though the private complaint runs into 28 pages, the gist of the allegations can be culled out as follows:-

Accused with an intention of converting the Trust properties as separate properties have made alienations in the form of sale deeds dated 29/6/1778 and 21/2/1981. Transferees in turn sold the property to one partnership firm and the said firm also availed Bank loan, thereby Bank officials also made as an accused. Further allegations were made to the effect that lease deed dated 27/7/1990 was also executed in respect of partition of Trust property. Similarly partition deed dated 27/1/2004 also deals with Trust properties. Main allegation in the complaint is that the above transactions were done without the permission of Court.

15. The accused Nos. 2 to 4 are the present Trustees of the first accused/Trust. The other accused are either family members or purchasers, attestators for Bank official etc. Though it appears to be a private complaint dealing with the criminal aspect, the fact that the daughter has filed a suit against her own father, which was dismissed by the trial court and the same was confirmed by this Court in A.S.No.573 of 2011 and later, it was confirmed by the Hon'ble Apex Court in S.L.P.No.15105 and 15106 of 2018 and the fact that the filing of the Trust O.P.No.108 of 2010 by the wife of the party-in-person Mr. Jayanth Balakrishnan, who represented society before this Court is not disputed. Similarly, the filing of the impleading petitions in the Trust O.P.s by the society is also not disputed and dismissal of all the applications is also not disputed by other side.

16. Undisputed facts placed before the Court which was recorded in earlier paragraph was never whispered in the criminal complaint which is the subject matter of present quash



petition. It is relevant to note that the Society has already filed scheme suit in the year 2015. In I.A.No.224 of 2015 in O.S.C.F.R.No.2583 of 2015 before the Principal District Judge, Coimbatore, as could be seen from the typed sets annexed here which is also not disputed, same was dismissed as not pressed. Filing of the suit to frame scheme itself suppressed in the private complaint. It is also to be noted that one another suit filed to frame scheme was filed by Mrs.Jeyashree Jayanth, W/o.Jayanth Balakrishnan argued was pending before Coimbatore Principal District Court in the above proceedings. The respondent Society has filed petition in I.A.No.540 of 2016 for impleading them as parties which was dismissed by the learned Principal District Judge after full contest on 24/4/2019. Court has recorded the finding that above petition was filed only to drag on the petition filed by the wife of Jayanth Balakrishnan. Thereafter, Leave Application was filed to frame Scheme in I.A.No.2199 of 2011 in OS.C.F.R.No.26116 of 2011 was dismissed by Principal District Judge, holding that there was a long standing dispute between third petitioner, thereon, viz., daughter of second accused (father) only with a view to score out her personal vengeance only above petition has been filed. Besides, Court also recorded finding that Trust is first accused is doing charity in consonance with the object of the Trust. Accordingly, dismissed leave Application. The party-in-person who argued on behalf of the respondent Society now claims to be the President of Society and was authorised to appear on behalf of Society. The fact remains that he is none other than son-in-law of Managing Trustee N.Krishnasamy second accused. Against whom his wife Jayshree Balakrishnan has filed Civil Suit as Trust O.P., all went against her. In fact, one such Civil Suit went upto the Hon'ble Supreme Court in S.L.P.Nos.15105 and 15106 which were also dismissed against her.

17.From these facts, it is very clear that the present private complaint is the brain child of the daughter and son-in-law who lost the battle in civil proceedings against A.2 Krishnaswamy. It is also to be noted that even assuming that there was any violation in the administration of the Trust property, the proper remedy is to set right the same in suit being filed under Section 92 of the Code of Civil Procedure. Even when the suits are filed for the interest of the Trusts, when the Court finds that such litigation is only to vindicate the personal rights, the Court would not permit such litigation and leave normally would be rejected on the threshold. Therefore, having lost all the civil litigations, the respondent now wants to achieve, what could not be achieved in Civil Suit, by way of a criminal prosecution, by instituting the complaint before the Magistrate Court, implicating the entire family members even not sparing the bank officials.



18. It is relevant to note that the trust deed itself authorizes the trustees to deal with the property and mode of sale is provided in the deed itself. Therefore, at no stretch of imagination those sales which impugned and challenged almost after three or four decades could be construed as an offence, particularly, Civil Court itself recorded the finding that Trust is doing its charitable activities in consonance with the object of the Trust.

19. Complaint runs to about several pages. The entire complaint itself indicate that the main grievance of the parties, viz., defacto complainant is to take over the Trust. Introducing the ingredients to fit into the offence to give criminal colour is not an easy task to the persons who wanted to wreck vengeance against family members due to acrimonial atmosphere prevailing between them in view of losing final battle over valuable immovable properties. Merely because some clever averments have been made, so as to attract the criminal colour, which does not mean that such complaints should reach its logical end and people should face the ordeal of trial and harassment in criminal trial.

20. From the facts narrated, this Court satisfies itself that initiation of entire prosecution is nothing but motivated and initiated only with a motive to vindicate personal rights of daughter and son-in-law as against A.2 in that process also the other accused made as an accused. When the entire criminal prosecution is a result of malafide only in order to wreck vengeance on the accused and with a view to spite him due to private and personal grudge, same has to be nipped in the bud.

21. In 1992 SUPP (1) SUPREME COURT CASES - 335 STATE OF HARYANA AND OTHERS Vs. BHAJAN LAL AND OTHERS, the Hon'ble Apex Court has set out the following guidelines for quashing the complaint.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



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(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

22. In Satish Mehru Vs. State (N.C.T of Delhi) and another 2012 (13) SCC 614 -, the Hon'ble Apex Court in para 21 has held as follows:-

"A Criminal trial Court cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate and the accused. Such a course of action is not contemplated in the system of criminal



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jurisprudence that has evolved by the Courts over the years. A criminal trial, on the contrary is contemplated only on definite allegation, prima facie, establishing the commission of offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of trial against accused.

23. Therefore, this Court is of the view that what could not be achieved in civil proceedings cannot be permitted to be achieved in criminal proceedings. If such thing is allowed, it may even amount to over turn the judgment of the Hon'ble Apex Court where civil litigation fought for property reached finality.

24. From the materials available on record, this Court is also placed on the records the conduct of party-in-person in the matter. He has filed memo before the Court on 29/9/2021 claims to be the degree holder in L.L.M.FICA and President of respondent Society. The tenor of language used in memo indicate that he is bent upon making accusation against Principal District Judge, who dismissed petition seeking leave to file suit to frame scheme. Further written submission filed before the Court also indicate that he has targeted predecessor Judge for his question as to the locus of party-in-person. Similarly, he has not spared the other side lawyers who conducted all civil litigation against his wife and made several accusations without any basis. Tenor of language and accusation against Judges and other side lawyer is highly deprecated. This Court hope that such thing will not recur hereafter.

25. Though several authorities have been cited by the Party-in-Person, much emphasis was made on the decision reported in A.R. Antulay Vs. Ramdas Srinivas Nayak and Ors AIR 1984 SC 718, wherein it is held that punishment of the offender in the interest of Society being one of the objects behind penal statutes enacted for larger good of the Society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. Further, there is no dispute to the proposition laid down in several authorities relied on by him before the Court. But the fact remains that this Court satisfies itself the entire prosecution is initiated in order to wreck vengeance against Trust member due to civil disputes.

26. Learned Judicial Magistrate also mechanically took cognisance of the private complaint merely on the sworn statement without application of mind. Taking cognisance



mechanically makes it clear that the learned Magistrate abdicated his judicial duties and issued summons to all the accused to face the harassment and to undergo the ordeal of criminal trial.

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27. In view of the above, this Criminal Original Petition is allowed. C.C.No.38 of 2017, pending on the file of the Judicial Magistrate, Mettupalayam, is quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

psa/mvs

To

1. The Judicial Magistrate,
Mettupalayam.
2. Do Thro the Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.62792

CrI.O.P.No.15514 of 2017
and
CrI.M.P.Nos.9691 of 2017

GSM(CO)
RGA(15/12/2021)